

Appl. No. 11/811,527
Docket No. 8768MD2
Amdt. dated January 8, 2010
Reply to Office Action mailed on October 19, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 37-45 and 47-53 are pending in the present application. No additional claims fee is believed to be due.

Claim 37 has been amended to more particularly characterize the invention. Support for the amendment is found at page 9, lines 22-23 and page 10, lines 3-4 of the present application (Provisional U.S. Patent Application Serial No. 60/400,282, now US Patent No. 7,459,494, at col. 5, lines 55-67 and col. 6, lines 1-37, which is properly incorporated by reference on pages 10 and 22 of the present application). In addition, the present specification has been amended to incorporate the portions of US Patent No. 7,459,494 relied upon for this amendment, in accordance with MPEP 608.01(p). Claim 43 has also been amended to correct a typographical error.

Claims 1-36, 46 and 54 have previously been canceled without prejudice.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102(e) Over Desai, et al.

Claims 37-45 and 47-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Desai, et al. (hereinafter "Desai") (U.S. Patent Application Publication No. 2003/0088228).

A person shall be entitled to a patent unless - the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the

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United States and was published under Article 21(2) of such treaty in the English language. (35 U.S.C. §102(e)).

Applicants submit that U.S. Patent Application Publication No. 2003/0088228, now U.S. Patent No. 7,056,411 is not available as a prior art reference under 35 U.S.C. §102(e). On November 1, 2006, Applicants filed a Renewed Petition To Accept Unintentionally Delayed Claim Under 35 USC §120 seeking a corrected priority claim for the benefit of a prior-filed nonprovisional application. Specifically, Applicants requested that the Office recognize that the current application (10/811,527) is a divisional of 10/288,095, filed November 5, 2001 (now Pat. No. 7,056,411), which claims the benefit of U.S. Provisional Application 60/337,804, filed November 5, 2001. On January 5, 2010, the Office mailed a corrected filing receipt indicating that the corrected priority data requested by Applicants was proper. (See attached Corrected Filing Receipt).

As such, the subject matter used in the office action for the 102(e) rejection is not an invention described in an application or a patent before the invention by the applicant. In fact, the current application is the child and claims priority to the cited 102(e) reference. Accordingly, Applicants submit that U.S. Patent Application Publication No. 2003/0088228, now U.S. Patent No. 7,056,411, is not available as a prior art reference under 35 U.S.C. §102(e) and should be removed.

Reconsideration and withdrawal of the rejection of claims 37-45 and 47-53 under 35 U.S.C. 102(e) as being anticipated by Desai (U.S. Patent Application Publication No. 2003/0088228, now U.S. Patent No. 7,056,411) is respectfully requested.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC §102(e). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of

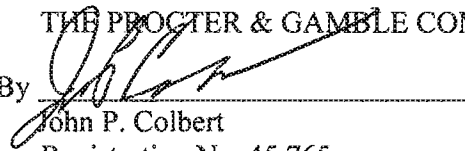
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the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 37-45 and 47-53 is respectfully requested.

Respectfully submitted,

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